

REMARKS

Claims 44-45 and 61-62 are pending in the application. All claims stand rejected under 35 U.S.C. 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. All claims also stand rejected under the judicially created doctrine of nonstatutory obviousness-type double patenting in view of U.S. Patents Nos. 6,455,001 and 6,537,496. For the reasons set forth below, reconsideration of the application is respectfully requested.

In a prior amendment claims 44 and 61 were amended to replace the prior language “be displaced freely” with the current language “move freely” so that the language of the claims matches the language of the specification, namely at paragraph 72 (and subsequent paragraphs). Nevertheless, the current Office Action rejects the claims under §112 because of the prior “displaced freely” language, stating:

[t]he claims are vague and indefinite as to what structure facilitates the claimed ‘... a part of their surface can be displaced freely.’
Also it is not clear what is intended by ‘displaced freely’.

As previously stated, the amended claims have been amended to avoid the offending “displaced freely” language. In its place, the amended claims state that the test strip comprises an overlay comprising one or several flat overlay elements which are attached to the test strip in such a way that at least a part of their surface can move freely relative to the strip surface when the test strip is bent towards a side on which the overlay is located. Such language is believed to particularly point out and distinctly claim patentable subject matter, particularly in view of the description in the specification as filed, which describes the workings and benefits of ensuring that the overlay elements can move freely relative to the strip surface.

As discussed in the patent specification, the spreading material can form a fold over the test field in unfavourable cases if the test strip which is usually flexible is subjected to bending during use. That wrinkling may impair the distribution of the reagent sample over the test field. This wrinkling can be avoided when the overlay of the spreading material is composed of one or several flat-shaped overlay elements which are attached to the flexible test strip in such a way that at least a part of their surface can move freely relative to the surface of the object covered by this part in the direction of curvature produced when the object is bent. Figure 4, for example, shows the freely movable overlay elements 6 and 6a. In view of this disclosure it is respectfully submitted that the application as filed discloses with clarity the claimed "overlay elements which are attached to the test strip in such a way that at least a part of their surface can move freely relative to the strip surface when the test strip is bent towards a side on which the overlay is located."

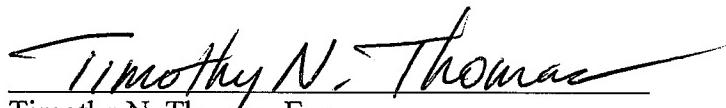
The pending Office Action also rejects the claims under §112 because "it is not clear what type of structure is intended by the claimed 'overlay'." It is respectfully submitted that the patent specification describes the overlay in structural detail, including, for example, at paragraph 72 where the overlay elements are described. In addition, it is noted that reference numerals 6 and 6a are stated in the specification to show illustrative overlay elements according to one aspect of the claimed invention. In view of this disclosure it is respectfully submitted that the application as filed discloses with clarity the claimed "overlay elements which are attached to the test strip in such a way that at least a part of their surface can move freely relative to the strip surface when the test strip

is bent towards a side on which the overlay is located.” Reconsideration of the rejection under §112 is therefore respectfully requested.

The pending Office Action also raises a nonstatutory obviousness-type double patenting rejection in view of U.S. Patents Nos. 6,455,001 and 6,537,496. Terminal Disclaimers responsive to those rejections are submitted herewith.

In view of the above it is believed that the pending application is now in condition for allowance. Favorable reconsideration is therefore respectfully requested.

Respectfully submitted,



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